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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,318	08/31/2001	Wayne I Knigge	5328	1343

7590 12/17/2007  
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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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12/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/945,318

**Applicant(s)**

KNIGGE ET AL.

**Examiner**

Arthur L. Corbin

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57,59-65 and 77-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57,59-65 and 77-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 112307.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 23, 2007 has been entered.

2. Claims 1, 4-17, 21, 22, 24, 27-29, 32-35, 37-39, 41-43, 45-57, 59-65 and 77-79 are rejected on the ground of res judicata since the rejection of each of these claims was affirmed by the Board of Appeals in Appeal No. 2007-2060.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 10, 12, 15, 27-29, 41, 42, 59-61, 65 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker as set forth on pages 4-8 and 17-20 of the Examiner's Answer dated November 21, 2006.

5. Claims 4 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker as applied to the claims above, and further in view of Ray as set forth on pages 8-9 of said Examiner's Answer.

6. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson, Ylvisaker and Ray as applied to claims 4 and 48 above, and further in view of Ours et al as set forth on pages 9-10 of said Examiner's Answer.

7. Claims 5-8, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Witkowski as set forth on pages 10-11 of said Examiner's Answer.

8. Claims 9, 11, 33-35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Galomb as set forth on pages 1-12 of said Examiner's Answer.

9. Claims 16, 17, 21, 22, 43, 45-47 and 51-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Thompson et al (2,478,438) as set forth on pages 12-14 of said Examiner's Answer.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Schwab et al as set forth on page 14 of said Examiner's Answer.

11. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Kraft Foods Inc. (WO 98/12110) as set forth on pages 14-15 of said Examiner's Answer.

12. Claim 39, 78 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Hellweg et al as set forth on pages 15-16 and 20-21 of said Examiner's Answer.

13. Claims 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer in view of Thompson et al, Francis, Maglecic et al, McCrosson and Ylvisaker et al as applied to the claims in paragraph no. 4 above, and further in view of Miyake et al as set forth on pages 16-17 of said Examiner's Answer.

14. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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Art Unit: 1794

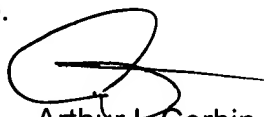
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur L. Corbin  
Primary Examiner  
Art Unit 1794  
12-13-07